



Paper No. 5

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**SEP 10 2001**

**OFFICE OF PETITIONS**

In re Application of	:
Fumi Katagiri	:
Application No. 09/770,509	: DECISION DISMISSING
Filed: 25 January, 2001	: PETITION
Attorney Docket No. NADII.018A	:

This is a decision on the petition filed on 11 June, 2001, requesting that the above identified application be accorded a filing date of 25 January, 2001, with seven (7) sheets of drawings containing three (3) drawing figures.

The application was filed on 25 January, 2001. On 9 May, 2001, however, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had been deposited without drawings. Additionally, petitioner was informed that the statutory basic filing fee, additional claims fees, the oath or declaration, and a paper copy of the Sequence Listing were required. A two (2)-month period for reply was set.

The present petition argues that 7 sheets of drawings containing 3 figures were filed on 25 January, 2001. In support, the petition is accompanied by a copy of 7 sheets of drawings, a copy of a certificate of mailing by Express Mail and a copy of the application transmittal letter.

The argument is not persuasive. The USPTO file is the official record of the papers originally filed in this application. A review of the official file reveals that no sheets of drawings were filed on 25 January, 2001, since no drawings are present in the file. An applicant alleging that a paper was filed in the

USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The only evidence relied on to support petitioner's allegation is the application transmittal letter and the certificate of mailing by Express Mail. The listing of papers on an application transmittal letter or in a certificate of mailing is not sufficient evidence that a paper so listed was actually filed in the USPTO.

The USPTO has a well established and well publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

Unfortunately, in this case, petitioner failed to list 7 sheets of drawings on the return postcard. Therefore, it is not evidence that 7 sheets were filed on 25 January, 2001.

It is noted that the present application contains process or method claims. It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). Since the application was filed with at least one claim directed to a process or method, the application should have been treated as an application for which a drawing is not necessary and Initial Patent Examination Division should have mailed a "Notice Of Omitted Item(s)." See MPEP § 601.01(f).

In view of the above, the Notice mailed 9 May, 2001, is hereby withdrawn. The application is accorded a filing date of 25 January, 2001, without drawings.

The petition is granted to the extent indicated above.

Receipt is acknowledged of the authorization to charge fees to a deposit account filed on June 11, 2001. The \$710.00 basic filing fee and \$1,198.00 for additional claim fees have been charged to the deposit account.

The application was filed on 25 January, 2001, without a signed oath/declaration in compliance with 37 CFR 1.63 or the paper or compact disc copy of the "Sequence Listing" required by 37 CFR 1.821(c).<sup>1</sup>

Applicant is given TWO MONTHS from the mailing date of this decision to file a signed oath/declaration in compliance with 37 CFR 1.63 and a paper or compact disc copy of the "Sequence Listing," as well as an amendment directing its entry into the specification and a statement that the submission includes no new matter. See 37 CFR 1.821(g). This time period may be extended pursuant to 37 CFR 1.136(a). Failure to comply with these requirements will result in the abandonment of the application.

Since the application was filed on 25 January, 2001, without the basic filing fee or a signed oath/declaration, the \$130.00 surcharge set forth in 37 CFR 1.16(e) is required and has been charged to deposit account No. 11-1410.

The application is being returned to the Office of Initial Patent Examination to await the response required above and for further processing with a filing date of 25 January, 2001, including an indication in USPTO records that "0" sheets of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.



Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>1</sup> Only the copy of the "Sequence Listing" in computer readable form (37 CFR 1.821(e)) was filed on 25 January, 2001.